

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION**

FRANKIE L. JOHNSON,)
)
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Plaintiff,)
)
)
v.) Case No. 1:13-cv-01928-WMA-SGC
)
)
JOE F. MANGOINE, et al.,)
)
)
Defendants.)

MEMORANDUM OPINION

The magistrate judge entered a report and recommendation on January 8, 2016, recommending the plaintiff's Eighth Amendment failure-to-protect claims against Correctional Officer Newcomb be dismissed without prejudice pursuant to Rule 4(m) of the *Federal Rules of Civil Procedure* because the plaintiff did not serve Newcomb with a copy of the amended complaint within 120 days after the amended complaint was filed. (Doc. 33). The magistrate judge further recommended the motions for summary judgment on the plaintiff's Eighth Amendment medical claims filed by Captain Carl Sanders and Corizon be granted and those claims be dismissed with prejudice. (*Id.*). No objections have been filed by any party.

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation, the court is of the opinion that the magistrate judge's report is due to be and is hereby **ADOPTED** and her

recommendation is **ACCEPTED**. The plaintiff's Eighth Amendment failure-to-protect claims against Correctional Officer Newcomb are due to be **DISMISSED WITHOUT PREJUDICE** pursuant to Rule 4(m) of the *Federal Rules of Civil Procedure* because the plaintiff did not serve Newcomb with a copy of the amended complaint within 120 days after the amended complaint was filed. Additionally, the court **EXPRESSLY FINDS** that there are no genuine issues of material fact regarding the plaintiff's Eighth Amendment medical claims against Captain Carl Sanders and Corizon and these defendants are entitled to judgment as a matter of law. Accordingly, the defendants' motions for summary judgment are due to be **GRANTED** and the plaintiff's claims against them are due to be **DISMISSED WITH PREJUDICE**. A final judgment will be entered.

DONE this 8th day of February, 2016.



WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE